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CLERK, US DISTRICT COURT
NORFOLK, VA

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF VIRGINIA
NORFOLK DIVISION

JTH TAX, INC. d/b/a LIBERTY TAX SERVICE,

Plaintiff,

Civil No. 2:07cv169

v.

JEROME REED,

Defendant.

COMPLAINT

NOW COMES the Plaintiff, JTH Tax, Inc. d/b/a Liberty Tax Service, by counsel, and for its Complaint against the Defendant, Jerome Reed states as follows:

The Parties

1. The Plaintiff, JTH Tax, Inc. d/b/a Liberty Tax Service ("Liberty") is a corporation duly organized and existing under the laws of the State of Delaware. Its corporate headquarters and principal place of business are at 1716 Corporate Landing Pkwy., Virginia Beach, Virginia 23454.

2. The Defendant, Jerome Reed ("Reed"), previously owned and operated five Liberty Tax Service franchises which gave to Reed the right to operate Liberty Tax Service offices using Liberty's proprietary trademarks and methods in specified territories in New Jersey.

3. Pursuant to those Franchise Agreements, Reed eventually operated one Liberty Tax Service office in the Territory identified by Liberty as NJ163. This office was located at 6 Market Street, Clifton, New Jersey 07012. *See,* Via Decl. and Ex. 1 which is a true and correct

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copy of the franchise agreement for this territory. The other agreements are identical except for the territory description.

4. Reed also purchased four other Liberty territories in which he never opened offices, pursuant to identical franchise agreements, but for different territories.

5. Reed is a citizen of the state of New Jersey and his last known home address is 44 Cherrywood Drive, Piscataway, New Jersey 08854.

Personal Jurisdiction

6. Personal jurisdiction over Reed exists in Virginia because:

(a) In the process of purchasing and operating Liberty Tax franchises, Reed had a substantial and continuing relationship with Liberty's headquarters in Virginia Beach, Virginia, including travel to Virginia to attend a one-week training class in Virginia Beach, and the submission of regular reports and other regular contact with Liberty in Virginia Beach, Virginia. (See Burger King Corp. v. Rudzewicz, 471 U.S. 462 (1984)); and

(b) Reed's Franchise Agreements with Liberty contain a consent to jurisdiction in favor of "the state and federal court of the city or county of our National Office, presently "... the United States District Court in Norfolk, Virginia." (Ex. 1, ¶ 15.b.)

Subject Matter Jurisdiction

7. Subject matter jurisdiction is based upon 28 U.S.C. § 1332(a), diversity of citizenship, in that the amount in controversy is in excess of $75,000, exclusive of interest and costs.

Venue

8. Venue is proper in this Court pursuant to 28 U.S.C. § 1391 because a portion of the cause of action arose in Virginia Beach and because Reed's Franchise Agreements with Liberty contain a forum selection clause specifying this Court as an appropriate forum. (Ex. 1, ¶ 15.b.)

Facts

9. At various times throughout 2004 and 2005, Reed purchased five franchise territories in New Jersey, pursuant to five written franchise agreements. *See,* Ex. 1 which is a true and correct copy of the franchise agreement for one of these territories. The other agreements are identical except for the territory description.

10. Reed refused to be guided by his Franchise Agreement and the marketing and operational advice of Liberty in order to be successful. For example, Reed—

*Failed to maintain office hours during the off season in violation of Section 6.e. of his franchise agreement. *See*, Via Decl.

* Failed to apply for an EFIN in time to ensure that he would be able to obtain an EFIN from the IRS by January 8th, 2005 in violation of Section 8(b)(ix) of the franchise agreement. *Id.*

*Failed to submit a Budget and Profit and Loss statement in violation of Section 7.b. of the his franchise agreement. *Id.*

*Failed to submit a Gross Receipts Report in violation of Section 7.a. of his franchise agreement. *Id.*

*Failed to have a telephone number and or answering machine via which customers could reach his office in violation of 6.h. of his franchise agreement. *Id.*

*Failed to post the correct business hours and location where clients could reach him in the off season. *Id.*

*Failed to have a computer system necessary to adequately service customers in violation of section 6.i. of the franchise agreement. *Id.*

*Failed to listen to conference calls which help to ensure a franchisee's successful operation of a Liberty office. *Id.*

*Failed to utilize Liberty's marketing plan and use roadside wavers although this is Liberty's proven effective marketing technique. *Id.*

*Abandoned his Liberty office in violation of Section 6.e. of his franchise agreement. *Id.*

*Failed to pay monies owed to Liberty in violation of Section 21 of his franchise agreements (Gundran Decl.).

*Such other and further breaches as will be the subject of further investigation and discovery and proof at trial.

11. On or about April 4, 2006, Liberty sent a Notice to Cure to Reed informing him that he was in violation of his Franchise Agreements in that he owed to Liberty monies which were more than 30 days past due. Via Decl., Ex. 6.

12. Reed failed to cure this deficiency. Gundran Decl and Via Decl.

13. On or about June 27, 2006, Liberty sent a letter to Reed informing him that his franchise agreement was terminated based upon his failure to pay amounts owing to Liberty. Via Decl., Ex. 7.

COUNT I
BREACH OF FRANCHISE AGREEMENT

14. The plaintiff repeats and re-alleges paragraphs 1-13 as if fully set forth herein.

15. Upon termination of Reed's Franchise Agreement with Liberty, Reed became subject to certain post-termination obligations to Liberty. Ex. 1, ¶¶ 9-10.

16. In addition to the in-term breaches already set forth above, Reed has breached his post-termination obligations in the following ways:

(a) Filed a lawsuit against Liberty in New Jersey state court in breach of Section 15 of his franchise agreement, which is causing Liberty to incur tens if not hundreds of thousands of dollars in legal fees which Liberty would not incur if Reed had honored Section 15.b. of his franchise agreements and sued in Virginia where Liberty uses salaried in-house counsel to defend cases of this nature;

(b) Failed to pay to Liberty all amounts owing to Liberty (Gundran Decl.); and

(c) Such other failures as may be the subject of further investigation and discovery and proof at trial.

WHEREFORE, in consideration of the foregoing, the plaintiff Liberty Tax Service respectfully prays for the following relief:

1. That it be granted a judgment in its favor against Reed in the amount of $150,000;

2. Award to Liberty its costs incurred in pursuing this action; and

3. Grant to Liberty such other and further relief as justice and the equities of the case may require.

JTH Tax, Inc. d/b/a Liberty Tax Service

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